

December 9, 2005

Post Confirmation Trust for
Fleming Companies, Inc.
5801 N. Broadway Ext Ste 100
Oklahoma City, OK 73118

ATTN: Steve Eaton

KIRKLAND & ELLIS LLP
AND AFFILIATED PARTNERSHIPS

200 East Randolph Drive
Chicago, Illinois 60601
FEIN 36-1326630

Inv.# 2970417

IN THE MATTER OF **Berry, Wayne Litigation**
 File No. 41445-0006

For legal services rendered through October 31, 2005 (see attached Description of Legal Services for detail)	\$ 69,620.00
For disbursements incurred through October 31, 2005 (see attached Description of Expenses for detail)	\$ 3,700.95
Total for legal services rendered and expenses incurred	\$ 73,320.95

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Summary of Hours Billed

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Erin N Brady	.50	455.00	227.50
Damian D Capozzola	61.50	515.00	31,672.50
Eric C Liebeler	43.00	625.00	26,875.00
Romana O Samad	9.75	340.00	3,315.00
Richard L Wynne	.50	775.00	387.50
Allison Mayo Andrews	1.75	200.00	350.00
Neal F San Diego	61.75	110.00	6,792.50
Total	178.75		\$ 69,620.00

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Description of Legal Services

<u>Date</u>	<u>Hours</u>	<u>Name</u>	<u>Description</u>
10/03/05	4.00	Neal F San Diego	Index pleadings with attachments into case management database (3.0); image pleadings with attachments into database (1.0).
10/03/05	1.00	Damian D Capozzola	Communications and analysis re Guidance materials and production and re summary judgment filing.
10/04/05	2.50	Neal F San Diego	Organize and prepare binders for use by D. Capozzola re motion for summary judgment.
10/04/05	2.00	Neal F San Diego	Index correspondence with attachments into case management database.
10/04/05	1.50	Damian D Capozzola	Communications and analysis re summary judgment filings and prepare for hearing.
10/05/05	2.00	Neal F San Diego	Index correspondence with attachments into case management database.
10/05/05	3.00	Neal F San Diego	Analyze and prepare a binder re authorities for use by D. Capozzola.
10/05/05	3.00	Damian D Capozzola	Communications and analysis re Guidance production and F1 issues; prepare materials for summary judgment hearing.
10/05/05	1.25	Eric C Liebler	Work on discovery issues.
10/06/05	2.00	Neal F San Diego	Index pleadings with attachments into case management database.
10/06/05	.75	Damian D Capozzola	Communications and analysis re Guidance materials and Matsui order re same; complete materials for summary judgment hearing; analysis re C&S issues.
10/07/05	3.50	Neal F San Diego	Analyze and prepare correspondence with attachments for indexing (1.5); index correspondence with attachments into

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			case management database (2.0).
10/07/05	.25	Damian D Capozzola	Communications and analysis re case management and strategy issues.
10/07/05	4.75	Eric C Liebeler	Prepare for summary judgment hearing.
10/09/05	7.50	Eric C Liebeler	Prepare for summary judgment hearing; travel to Honolulu.
10/10/05	1.75	Damian D Capozzola	Communications and analysis re summary judgment hearing generally and profits apportionment issues in particular.
10/10/05	11.50	Eric C Liebeler	Prepare for summary judgment hearing.
10/11/05	.50	Romana O Samad	Go over issues in reply brief for upcoming hearing.
10/11/05	3.50	Neal F San Diego	Index pleadings with attachments into case management database (2.5); image pleadings with attachments into database (1.0).
10/11/05	.50	Damian D Capozzola	Communications with E. Liebeler and analysis re summary judgment hearing.
10/11/05	1.00	Damian D Capozzola	Communications and analysis re summary judgment hearing and offer of judgment strategies.
10/11/05	10.50	Eric C Liebeler	Prepare for and conduct summary judgment hearing; return to Los Angeles.
10/12/05	.50	Richard L Wynne	Telephone conference with E. Liebeler re Berry hearing.
10/12/05	1.50	Damian D Capozzola	Review pleadings re F-1 issues and revise response, and communications re same.
10/12/05	1.50	Eric C Liebeler	Edit discovery briefs.
10/13/05	1.25	Damian D Capozzola	Review and revise F-1 response brief and communications re same.

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<u>Date</u>	<u>Hours</u>	<u>Name</u>	<u>Description</u>
10/14/05	.50	Damian D Capozzola	Communications and analysis re discovery and Guidance issues.
10/16/05	.50	Eric C Liebeler	Review and analyze bills.
10/17/05	1.00	Damian D Capozzola	Analysis and communications with L. Smith and M. Walker re Guidance production issues.
10/18/05	2.00	Neal F San Diego	Index correspondence with attachments into case management database.
10/18/05	2.50	Neal F San Diego	Organize and prepare a binder re administrative claims filed by W. Berry for use by E. Liebeler to upcoming hearing on 10/27/2005.
10/18/05	1.00	Damian D Capozzola	Communications and analysis re summary judgment, discovery, and Delaware objection issues.
10/18/05	5.50	Eric C Liebeler	Study F-1 discovery motions in response to call from court; conduct telephone conference with Judge Mollway; discuss jury procedure analysis with D. Capozzola and client.
10/19/05	.75	Allison Mayo Andrews	Review court orders; revise calendar of events re same.
10/19/05	.50	Erin N Brady	Review Berry response to administrative objection.
10/19/05	4.50	Romana O Samad	Research and draft bench brief re election of damages.
10/19/05	4.50	Neal F San Diego	Analyze and prepare correspondence with attachments for indexing (1.5); index correspondence with attachments into case management database (3.0).
10/19/05	3.00	Damian D Capozzola	Revise supplemental submission re statutory damages; communications with team members, analysis, and research re same.
10/19/05	4.25	Damian D Capozzola	Communications and analysis re Feltner

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<u>Date</u>	<u>Hours</u>	<u>Name</u>	<u>Description</u>
			issues and supplemental briefing; communications and analysis re Guidance and F-1 issues; review and analysis of Delaware pleadings and communications re same.
10/20/05	4.75	Romana O Samad	Finalize, proof and file Berry bench memo.
10/20/05	5.50	Neal F San Diego	Index correspondence with attachments into case management database.
10/20/05	4.75	Damian D Capozzola	Review and revise submission re statutory damages and communications with team members and analysis re same; communications re October 27 hearing in Delaware.
10/21/05	2.50	Neal F San Diego	Index pleadings with attachments into case management database.
10/21/05	2.25	Damian D Capozzola	Review and analysis of communications from T. Hogan and draft responses re same; review pleadings and prepare for October 27 Delaware hearing.
10/22/05	.75	Damian D Capozzola	Review and analysis of Guidance reconsideration and DE hearing materials.
10/24/05	5.00	Neal F San Diego	Index correspondence with attachments into case management database (4.0); image correspondence with attachments into database (1.0).
10/24/05	1.25	Neal F San Diego	Organize and obtain all discovery responses by Berry for use by attorney.
10/24/05	4.75	Damian D Capozzola	Draft outline of response re Guidance reconsideration issues and communications with E. Liebler, L. Smith, and M. Walker re same; review and analysis of summary judgment order and communications with team members re same and related case management and strategy issues.

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<u>Date</u>	<u>Hours</u>	<u>Name</u>	<u>Description</u>
10/25/05	4.50	Damian D Capozzola	Draft response to Berry reconsideration motion re Guidance issues and communications with team members re same; prepare for and participate in telephone conference with M. Walker and L. Smith re reconsideration and Guidance issues; review and analysis re Berry written discovery responses and communications re same.
10/26/05	1.00	Allison Mayo Andrews	Review, process and collate incoming case documents; review files re B. Dechter expert report.
10/26/05	1.00	Neal F San Diego	Research expert report of B. Dechter with signature for use by attorney.
10/26/05	3.50	Neal F San Diego	Index correspondence with attachments into case management database.
10/26/05	8.75	Damian D Capozzola	Draft reconsideration opposition and communications re same; review communications from T. Hogan; communications with E. Liebeler and other team members re case management and strategy issues; communications with V. Limongelli and M. Walker re Guidance production issues; communications with L. Smith and analysis re copyright deposit issues; review and analysis of injunction and contempt motions filed by Berry and communications with team members re same; prepare for hearing re administrative claims.
10/27/05	4.50	Neal F San Diego	Index correspondence with attachments into case management database.
10/27/05	6.50	Damian D Capozzola	Prepare for and participate in hearing re administrative claims; attention to calendaring and case management issues; communications with M. Walker, V. Limongelli, and L. Smith re Guidance issues and analysis re 4.6 gig cluster issues; communications with B. Dechter re scheduling issues.

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10/28/05	4.50	Neal F San Diego	Index correspondence with attachments into case management database.
10/28/05	1.75	Damian D Capozzola	Communications with T. Hogan re Guidance motion; communications with V. Limongelli, M. Walker, and L. Smith re materials produced by Guidance; communications with E. Liebeler and L. Smith re case management and strategy issues; review and analysis of present and past injunction motions.
10/29/05	.75	Damian D Capozzola	Communications with E. Liebeler and analysis re case management and strategy issues; review 9th Circuit jury instructions.
10/31/05	2.50	Neal F San Diego	Image correspondence with attachments into case management database.
10/31/05	4.50	Damian D Capozzola	Communications and analysis re Guidance Software and 4.6 gig cluster issues; analysis of and attention to trial preparation and scheduling issues; prepare jury instructions; review communications from T. Hogan and draft responses.
	178.75		TOTAL HOURS

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Description of Expenses

<u>Date</u>	<u>Description</u>	<u>Amount</u>
7/07/05	Telephone call to: PALO ALTO,CA 650-331-0200	1.23
7/09/05	Telephone call to: REDWOOD CY,CA 650-743-3449	1.29
7/10/05	Telephone call to: LOSANGELES,CA 213-248-1212	.93
7/20/05	Telephone call to: PALO ALTO,CA 650-331-0200	1.50
7/20/05	Telephone call to: PALO ALTO,CA 650-331-0200	.91
7/20/05	Telephone call to: HONOLULU,HI 808-535-5711	1.53
7/22/05	Telephone call to: PALO ALTO,CA 650-331-0200	2.40
7/28/05	Telephone call to: PALO ALTO,CA 650-331-0200	2.10
8/04/05	Telephone call to: HONOLULU,HI 808-535-5711	1.04
8/04/05	Telephone call to: HONOLULU,HI 808-256-5045	1.38
8/04/05	Telephone call to: HONOLULU,HI 808-256-5045	2.80
9/29/05	FedEx, Ann Teranishi, HONOLULU, HI from: Neal San Diego	14.13
9/30/05	LEXISNEXIS - Computer Database Research - LexisNexis Database Usage for September, 2005	25.99
10/03/05	Telephone, Telephone call to: STATE OF, HI 808-535-5711	.60
10/03/05	Telephone call to: S SAN, CA 650-331-0200	2.80
10/03/05	Telephone call to: STATE OF, HI 808-535-5711	2.40
10/03/05	Postage	5.63
10/03/05	FedEx, Ann Teranishi, HONOLULU, HI from: Damian Capozzola	14.44
10/05/05	Telephone, Telephone call to: STATE OF, HI 808-535-5711	.60
10/05/05	Telephone call to: STATE OF, HI 808-535-5711	1.20
10/05/05	PACER SERVICE CENTER - Computer Database Research, Pacer Service Center Usage, 7/1/05 to 9/30/05 Jennifer Ballinger	.40

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10/05/05	PACER SERVICE CENTER - Computer Database Research, Pacer Service Center Usage, 7/1/05 to 9/30/05 Neal San Diego	181.28
10/05/05	PACER SERVICE CENTER - Computer Database Research, Pacer Service Center Usage, 7/1/05 to 9/30/05 Allison Mayo Andrews	.32
10/05/05	PACER SERVICE CENTER - Computer Database Research, Pacer Service Center Usage, 7/1/05 to 9/30/05 Adam Gorman	4.08
10/08/05	Telephone, Damian Capozzola, Cellular Service, Cingular, 9/9/05-10/8/05, 10/08/05, (Telephone Charges)	6.16
10/09/05	Telephone, Eric Liebeler, Internet Access, Hotel, 10/09/05, 10/09/05, (Court Hearing)	26.98
10/09/05	Travel Expense, Eric Liebeler, Hotel, Honolulu, HA, 10/09/05, (Court Hearing)	310.84
10/09/05	Airfare, Eric Liebeler, Airfare, Honolulu, HA, 10/09/05 to 10/11/05, (Court Hearing)	1,456.61
10/09/05	Transportation to/from airport, Eric Liebeler, To/From Airport, Los Angeles, 10/09/05, (Court Hearing)	65.00
10/09/05	Travel Meals, Eric Liebeler, Travel Meal, Honolulu, HA, 10/09/05, (Court Hearing)	22.59
10/09/05	Car Rental, Eric Liebeler, Car Rental, Honolulu, HA, 10/09/05 to 10/11/05, (Court Hearing)	142.27
10/09/05	Other Travel Expenses, Eric Liebeler, Parking, Honolulu, HA, 10/09/05, (Court Hearing)	15.00
10/10/05	Telephone, Eric Liebeler, Telephone While Traveling, Hotel, 10/10/05, 10/10/05, (Court Hearing)	148.08
10/10/05	Telephone, Eric Liebeler, Telephone While Traveling, Hotel, 10/11/05, 10/10/05, (Court Hearing)	49.00
10/10/05	Travel Expense, Eric Liebeler, Hotel, Honolulu, HA, 10/10/05, (Court Hearing)	310.84
10/10/05	Travel Meals, Eric Liebeler, Travel Meal, Honolulu, HA, 10/10/05, (Court Hearing)	23.49
10/10/05	Travel Meals, Eric Liebeler, Travel Meal, Honolulu, HA, 10/10/05, (Court Hearing)	59.12

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10/10/05	Other Travel Expenses, Eric Liebeler, Parking, Honolulu, HA, 10/10/05, (Court Hearing)	15.00
10/11/05	Travel Expense, Eric Liebeler, Hotel, Honolulu, HA, 10/11/05, (Court Hearing)	78.12
10/11/05	Transportation to/from airport, Eric Liebeler, To/From Airport, Los Angeles, 10/11/05, (Court Hearing)	65.00
10/11/05	Travel Meals, Eric Liebeler, Travel Meal, Honolulu, HA, 10/11/05, (Court Hearing)	12.82
10/14/05	Telephone call to: S SAN,CA 650-331-0200	.80
10/20/05	Telephone call to: STATE OF,HI 808-256-5045	.80
10/26/05	Telephone call to: STATE OF,HI 808-535-5711	1.00
10/26/05	Telephone call to: S SAN,CA 650-331-0200	1.60
	Scanned Images	7.65
10/27/05	Telephone call to: S SAN,CA 650-331-0200	2.80
10/27/05	Telephone call to: S SAN,CA 650-331-0200	.60
10/28/05	Telephone call to: STATE OF,HI 808-535-5711	.60
10/28/05	Telephone call to: STATE OF,HI 808-535-5711	.80
10/28/05	Telephone call to: S SAN,CA 650-743-3449	.80
	Standard Copies	605.60
	Total Expenses	\$ 3,700.95